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Letter dated 25 January 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Portugal, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-23624 (E) 220402

Annex

Note verbale dated 18 January 2002 from the Permanent Mission of Portugal to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Portugal to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to convey a preliminary report on the measures undertaken by Portugal to implement the Security Council resolution 1373 (2001), presented according to the systematization suggested by the Counter-Terrorism Committee (see enclosure). An addendum to this report with more detailed information will be submitted to the Committee shortly.

Enclosure

Report of the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

Portugal

Since the events of September 11, and in particular following the approval by the Security Council of resolution 1373(2001), Portugal has undertaken intensive action, at the legislative and administrative levels, in the areas covered by that resolution, with the aim to preventing any activities, such as the financing of terrorism, which could support or promote terrorist attacks.

In this context, as a Member State of the European Union, many of the national measures mentioned in this report are naturally related to those adopted by the Union. Those norms, which are identified in a separate report by the EU, are in many cases self-executing within the internal legal systems of Member States. This is the case of the EU regulations - which become part of the domestic law of Member States and even prevail over it when domestic law conflicts with regulations. Other legal framework instruments, such as directives, are followed by the subsequent adoption of national legislation.

The following is a preliminary report on the measures undertaken by Portugal to implement the Security Council resolution 1373 and it is presented according to the systematization suggested by the Counter Terrorism Committee. A complement to this report with more detailed information will be submitted to the Committee at a later stage.

1.b - The financing of terrorism is a crime under article 300, paragraph 1, of the Penal Code, which is punishable by 5 to 15 years of imprisonment of those who promote or support terrorist groups.

On 20 December 2001, the Portuguese Parliament, in one of the very last acts of the legislative session, approved a law, currently pending publication, which aims at criminalizing any activity that violates sanctions regimes.

Moreover, the entry into force in the domestic law of the Convention for the Suppression of the Financing of Terrorism, the ratification of which is under preparation, will complete the criminal law framework for this type of crime.

1.c - Pursuant to the EU regulation 467/01, which implements Security Council resolutions 1267 (1999) and 1333 (2000), three accounts were frozen and two other were

blocked from the total of five accounts identified as belonging to individuals whose names are included on the relevant lists (this information has already been conveyed to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan).

Prior to the approval of EU regulation 2589/01 (27 December 2001), decisions concerning the freezing of accounts/assets that are suspected of resulting from (or destined for) the practice of serious crimes, including terrorism, followed the regime established by the national legislation concerning money laundering (Decree law 313/93, which transposed EU Directive 91/308).

Under this law, and in accordance with the EU initiative to implement SC resolution 1373(2001), the Portuguese Minister of Finance, by a decision of 11 October 2001, ordered the dissemination through the banking system of the lists of individuals and entities suspected to be linked to the terrorists attacks of September 11, with a view to gathering information relevant to the criminal investigation and its subsequent communication to the competent judicial authorities.

The scope of the freezing of accounts/assets has been enlarged as a result of the adoption of EU regulation 2589 last December. Indeed, national authorities now have legal grounds to freeze accounts/assets that may apparently be "clean", when there is a suspicion that they may be used to finance terrorists acts or groups.

The Department for European and International Relations of the Ministry of Finance and the Department for Multilateral Affairs of the Ministry of Foreign Affairs are the competent authorities to initiate proceedings of freezing accounts or assets.

1.d - The Decree law 313/93 transposes to domestic law the Directive CE/91/308 concerning the prevention of the use of the financial system for the purpose of money laundering. This text was recently modified by Directive CE/2001/97 and the transposition of this latter into domestic law is in the course of preparation.

The FAFT recommendations are also abided by Portugal and have been gradually incorporated into domestic law.

2. a - Both the recruitment for terrorist groups and the supply of arms to terrorists are included in the overall category of "crimes against the public order and tranquility" and are punishable by imprisonment from 5 to 15 years, independently of any other crimes committed by the group or organization.

Co-participation in a terrorist group is punishable autonomously by the Penal Code with imprisonment from 10 to 15 years.

in this regard, a reference is due to the legislation concerning the use of arms, in particular Decree law 37313/49 (modified by Law 93-A/97, subsequently modified by

Law 98/2001) aiming at criminalizing acts that may endanger physical integrity resulting from the use and holding of arms, explosives or pyrotechnic substances or devices in the framework of civic, political, religious, cultural, artistic and sportive manifestations.

Portugal is a party to the European Convention on the control of the use of arms by individuals, approved for ratification by the Government Decree 56/84. Moreover, Portugal participates in the work of several *fora* dealing with arms control, such as the Australia Group (chemical and bacteriological weapons), Nuclear Supply Group (NSG) and the Wassenaar Agreement (dual use items not included in the previous groups), abiding by the decisions taken in these frameworks.

2. b Measures taken after September 11:
Law, approved by the Parliament and currently awaiting publication, criminalizing the threat of terrorism. This threat is defined independently of its credibility in objective terms if, by itself, it causes alarm or disturbance to the population;

Law 31/01, adopted by Parliament, which foresees a special regime of collection of evidence for several types of organized crime, among which terrorism is included – derogation of tax and banking secrecy, voice and image recording – with a view to render more operational the investigation of this type of criminality. The violation of the obligation to lift professional secrecy by banking and other financial institutions is subject to a fine of a considerable amount of up to 750 000 Euros;

Law of National Security (Law 20/87), Decree law 144/99, Penal Code and Code of Penal Procedure, the regime of which authorizes the exchange of information among national authorities charged with the prevention and fight against terrorism and with their counterparts in other EU member States.

Since September 11 all relevant alert mechanisms of the National Security and Civil Protection System, including all security forces and services of (intelligence, police, criminal investigation, aliens, border control, maritime and aeronautic authorities) and Customs, were set up to deal with situations that threaten national security. The exchange of information at the international level is now processed more speedily with an increasing volume among the abovementioned entities and international organizations throughout the existing networks (Interpol, Europol, Schengen Information System, etc.)

2. c) d) – In this regard, it is relevant to mention, besides the Convention for the implementation of the Schengen Agreement, the Decree law 4/2001, recently adopted on the entry, permanence and exit of aliens in/from the national territory. In this framework, the Borders and Aliens Service is the competent department to implement the migration and asylum policies in Portugal. This service must consult with the Intelligence and Security Service with regard to matters relating to national security.

The Borders and Aliens Service, acting under the regime established by the Decree law 252/2000, remains, since, September 11, in the highest state of alert in the border points located at the sea and air ports. A rigorous and systematic control of all passengers, a

thorough verification of all travel and identification documents (through optical reading) is carried out by this Service. The Border and Alien Control Service meets on a weekly basis with representatives of other security forces to deal with matters relating to prevention/counter terrorism, in particular to exchange relevant information on the lists of individuals suspected, either of terrorism activities, or of being linked to their financing.

One of the few exceptions to the general principle of territoriality of the Portuguese penal law concerns the crime of terrorism group and the crime of terrorism, committed by Portuguese citizens or aliens against Portuguese citizens. In this latter case, Portuguese law is applicable if they are found in Portuguese territory and if their extradition cannot be granted.

In the case of Portuguese citizens, the Constitution sets out an exception that states that extradition can only be granted in conditions of reciprocity, formally recognized, and when the internal legal order of the requesting State is able to ensure an equitable and fair trial.

The adoption by the EU of the European arrest order and the subsequent mechanisms of delivery of arrested citizens, required, for its incorporation into the domestic legal order, the revision of the Constitution. Hence, constitutional law 1/2001 of 12 December 2001 introduced a new constitutional provision authorizing the implementation in domestic law of the abovementioned procedural rules and mechanisms of co-operation in criminal matters adopted by the EU. Nevertheless, without prejudice to the principle "*aut dedere aut judicare*" enshrined in the domestic law, the extradition remains inadmissible when, in the demanding State, the correspondent crime of terrorist group or crime of terrorism is punishable by the death sentence or other punishment that may entail irreversible damage to the physical integrity of the person.

2. f – see 2.b.

3. a – The events of September 11 stressed the need to intensify the exchange of information among the different entities involved, at the national and international levels, in the fight against terrorism. In this context, reference is due to the increase of the exchange of information with the security services of the United States. Moreover, on a weekly basis, assessments on national security have been compiled and conveyed to the Executive Committee of NATO.

The national security services increased the number of their meetings with similar services acting in the framework of existing bilateral protocols and with the recently established ad hoc structures, such as the periodical meetings of the Heads of the European Counter Terrorism units (CTG).

A permanent contact among the liaison officers of the different security intelligence services was established and joint operations organized. Moreover efforts are being made to standardize counter-terrorism measures taken by the EU Member States and, in particular, to update the information included on the lists concerning terrorist groups.

3.b – In the framework of the Office of the Security Coordinator (now with the participation of representatives of the aeronautic authority and air operators) the exchange of operational information was intensified. The Office is responsible for assessing and producing, on a weekly basis, reports on the situation concerning the threat of terrorism.
Also relevant in this regard are the activities undertaken by all organs of the National Security System in coordinating and managing resources for the investigation, information and prevention of terrorism acts. As a result of this effort, it was possible to identify suspicious situations and to convey in good time relevant operational information to the appropriate entities.

3. c) e) Portugal developed, in the framework of its relations with third countries, at the multilateral and bilateral levels, a systematic action to build awareness of the need to reinforce international cooperation in the area of counter terrorism. In several bilateral contacts, this matter was included in the respective agendas.

Mention must also be made, in this regard, of the launching by Portugal of the Extraordinary Summit on Terrorism of the Ministers of Foreign Affairs of the Mediterranean Forum (24 and 25 October 2001, in Agadir).

In all these contacts, the importance of States becoming parties and efficiently implementing international conventions in this area was highlighted. Moreover, the importance of the Global Convention on Terrorism and the added value it represents in international law was also stressed

Both these subjects were also underlined within the institutional framework of the Community of Portuguese Speaking Countries (CPLP). The Declaration of the CPLP on the fight against international terrorism of 31 October 2001 is demonstrative of the clear engagement of the Portuguese-speaking countries in this regard.

As it concerns the African Portuguese-speaking countries in particular, Portugal expressed its readiness to assist in the preparation of national legislation to implement international law on terrorism, by way of exchange of information, cooperation between Ministries or other means. In this line, Portugal has made available Portuguese versions of the UN Conventions on Terrorism and promoted concrete cooperation activities on subjects, such as justice and internal administration, relevant to the area of counter terrorism. Some of these countries are looking to the Portuguese experience in preparing their administrations for combating international terrorism and legislation or other measures in this field.

In the framework of the EU relations with third countries, Portugal took active part in the diplomatic contacts organized by the Union with these countries with the aim of assessing the level of implementation of the measures to counter international terrorism.

3. d) e) Portugal ratified 10 of the designated set of 12 International Conventions on Terrorism. Both the process of ratification of the International Convention on the Financing of Terrorism and of the accession to the Convention for the Marking of Plastic Explosives for the Purpose of Detection are being pursued at the domestic level.

3. f) Law 15/98 ensures that asylum cannot be granted to those who have committed crimes against humanity, as they are defined in the relevant international instruments, or any acts contrary to the purposes and principles of the United Nations.

3. g) Law 15/98 determines that the those who have been granted asylum may lose this status if they have committed acts contrary to the purposes and principles of the United Nations or the International Conventions in force in Portugal.